

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

Zohar III, Corp., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-10512 (KBO)

Jointly Administered

ZOHAR CDO 2003-1, LIMITED; ZOHAR II  
2005-1, LIMITED; and ZOHAR III, LIMITED,

Plaintiffs,

-against-

PATRIARCH PARTNERS, LLC;  
PATRIARCH PARTNERS VIII, LLC;  
PATRIARCH PARTNERS XIV, LLC;  
PATRIARCH PARTNERS XV, LLC;  
PHOENIX VIII, LLC; OCTALUNA LLC;  
OCTALUNA II LLC; OCTALUNA III LLC;  
ARK II CLO 2001-1, LLC; ARK  
INVESTMENT PARTNERS II, LP; ARK  
ANGELS VII, LLC; PATRIARCH PARTNERS  
MANAGEMENT GROUP, LLC; PATRIARCH  
PARTNERS AGENCY SERVICES, LLC; and  
LYNN TILTON,

Defendants.

Adversary No. 20-50534 (KBO)

**DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

---

<sup>1</sup> The "Debtors," and, where applicable, the last four digits of their taxpayer identification number are as follows: Zohar III, Corp. (9612), Zohar II 2005-1, Corp. (4059), Zohar CDO 2003-1, Corp. (3724), Zohar III, Limited ("Zohar III") (9261), Zohar II 2005-1, Limited ("Zohar II") (8297), and Zohar CDO 2003-1, Limited (together with Zohar II and Zohar III, the "Zohar Funds") (5119). The Debtors' address is 3 Times Square, c/o FTI Consulting, Inc., New York, NY 10036.

Defendants Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, Patriarch Partners XV, LLC, Phoenix VIII, LLC; Octaluna LLC, Octaluna II LLC, Octaluna III LLC, Ark II CLO 2001-1, LLC, Ark Investment Partners II, LP, Ark Angels VII, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners Agency Services, LLC, and Lynn Tilton (collectively, the “Defendants”) hereby move this Court for the entry of an order pursuant to Rule 12 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7012 of the Federal Rules of Bankruptcy Procedure, to dismiss the adversary proceeding complaint filed on March 9, 2020 (the “Complaint”) (D.I. 2) by Zohar CDO 2003-1, Limited, Zohar II 2005-1, Limited, and Zohar III, Limited (the “Zohar Funds”), with prejudice, based upon the Zohar Funds’ failure to state a claim upon which relief can be granted as more fully set forth in the accompanying Brief in Support of Defendants’ Motion to Dismiss the Complaint (“Brief”), the Declaration of Theresa Trzaskoma, dated September 21, 2020, and the exhibits attached thereto, filed contemporaneously herewith.

WHEREFORE, for all the reasons set forth in the Brief, the Defendants respectfully requests that this Court enter an order, substantially in the form attached hereto, that dismisses all counts of the Complaint, with prejudice, and grants Defendants such additional and further relief as the Court may deem just and proper. Defendants do not consent to entry of a final order by this Court.

Dated: September 21, 2020

**COLE SCHOTZ P.C.**

By: /s/ Patrick J. Reilley  
Norman L. Pernick (No. 2290)  
Patrick J. Reilley (No. 4451)  
G. David Dean (No. 6403)  
500 Delaware Avenue, Suite 1410  
Wilmington, DE 19801  
Telephone: (302) 652-3131  
Facsimile: (302) 652-3117 3  
npernick@coleschotz.com  
preilley@coleschotz.com  
ddean@coleschotz.com

– and –

**SHER TREMONTE LLP**

Theresa Trzaskoma (Admitted Pro Hac Vice)  
Michael Tremonte (Admitted Pro Hac Vice)  
Vikram Shah (Admitted Pro Hac Vice)  
90 Broad Street, 23rd Floor  
New York, New York 10004  
Telephone: (212) 202-2600  
Facsimile: (212) 202-4156  
ttrzaskoma@shertremonte.com  
mtremonte@shertremonte.com  
vshah@shertremonte.com

*Counsel to Lynn Tilton, Patriarch Partners, LLC,  
Patriarch Partners VIII, LLC, Patriarch Partners  
XIV, LLC, Patriarch Partners XV, LLC, Phoneix  
VIII, LLC, Octaluna LLC, Octaluna II LLC,  
Octaluna III LLC, Ark II CLO 2001-1, LLC, Ark  
Investment Partners II, LP, Ark Angels VII, LLC,  
Patriarch Partners Management Group, LLC, and  
Patriarch Partners Agency Services, LLC*